

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                                      |   |                           |
|--------------------------------------|---|---------------------------|
| IMG WORLDWIDE, INC., <i>et al.</i> , | ) |                           |
|                                      | ) | CASE NO.1:11 CV 1594      |
| Plaintiff(s),                        | ) |                           |
|                                      | ) | JUDGE DONALD C. NUGENT    |
|                                      | ) |                           |
| vs.                                  | ) | <u>MEMORANDUM OPINION</u> |
|                                      | ) | <u>AND ORDER</u>          |
| WESTCHESTER FIRE INS. CO.,           | ) |                           |
|                                      | ) |                           |
| Defendant.                           | ) |                           |

This case is before the Court on Defendant/Proposed Third-Party Plaintiff, Westchester Fire Ins. Co.'s ("Westchester") Notice of Motion to Bring a Third-Party Complaint Against Great Divide. (ECF # 177). Proposed Third-Party Defendant, Great Divide Insurance Company ("Great Divide") opposes the motion. (ECF #179). The issue has been fully briefed and is now ready for disposition.

In the original action between IMG Worldwide, Inc. ("IMG") and Westchester Fire Insurance Co., Westchester entered a request to file a Third-Party Complaint against Great Divide in the event Westchester was found liable for IMG's defense costs. This Court denied that motion

as moot after finding that Westchester was not liable for those costs. The issue of liability for defense costs was appealed. The Sixth Circuit Court of Appeals reversed this Court's determination on this issue and remanded "with instructions to enter judgment in favor of IMG on IMG's motion for judgment on Westchester's Duty to Defend and for further proceedings consistent with this opinion, including consideration of Westchester's contribution claims against Great Divide, which have been sufficiently preserved on appeal." (ECF #169). With regard to Westchester's potential contribution claims against Great Divide, the Sixth Circuit further stated: "[W]e note that Westchester can still seek reimbursement from Great Divide under various equitable principles including equitable contribution and subrogation." While declining to rule on the merits of such claims, the Sixth Circuit directed this court to revisit these issues on remand. (ECF # 169).

The Court of Appeals decision directs this Court to consider Westchester's contribution claims against Great Divide. As there are no such claims to consider unless Westchester is allowed to file a Third-Party Complaint against Great Divide, thereby bringing them in as official parties to this litigation, the Court has no option but to grant Westchester's motion.

For this reason, the Court hereby GRANTS Defendant/ Proposed Third-Party Plaintiff, Westchester's Motion to Bring A Third-Party Complaint Against Great Divide. Westchester should file its Third-Party Complaint as soon as possible. Discovery shall begin immediately. Because the parties are all fully aware of the issues to be raised in the Complaint, and have in fact already argued for and against the proposed claims before this court and the Court of Appeals, there is no need to further delay the resolution of this case by waiting until after an Answer is filed to begin any necessary discovery.

A status conference is set for March 30, 2015 at 9:30 a.m.. IT IS SO ORDERED.

/s/ Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: January 9, 2015